IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8259 OF 2006

M/s.Anuraj Sugars Ltd. .. .. Petitioner
v/s.
The State of Maharashtra & ors. .. Respondents

Mr.R.G. Ketkar for petitioner.

Mr.C.R.Sonawane, AGP for respondent No.1.

Mr.R.V.Govilkar for respondent No.3.

Mr.A.V.Anturkar for respondent No.4.

CORAM : H.L. GOKHALE, ACTING C.J. &
V.M. KANADE, J.

DATED : 29th January 2007

P.C. :

1. Heard the learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith. Counsel for all the parties have made their submissions.

3. The petitioner is a Public Limited Company which is keen in setting up a sugar factory in the area of village Yavat in Taluka Daund, District Pune. The petitioner was given a consent by the Maharashtra Pollution Control Board (for short "the Board") in August 2005 to establish a sugar factory. It appears that the consent was revoked on 1st February 2006. That was on the complaint

of some villagers pointing out that this factory is likely to lead to pollution in the adjoining areas. That complaint was made on 1st October 2005 by a large number of villagers. After the Board revoked the consent, an Appeal was preferred by the petitioner before the Appellate Authority under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short, "the said Act"). The Appeal was maintainable under Section 28 of the said Act. It was heard by a Three-Member of the Appellate Authority and the Appellate Authority allowed this Appeal and interfered with the order revoking the consent to establish the sugar factory.

4. It appears that there has been a Revision thereafter to the 2nd respondent-Minister for Environment of the State of Maharashtra and the Minister exercised the power under Section 29 of the said Act and interfered with the order made by the Appellate Authority. This order has been passed on 6th December 2006 which has led to the present Petition.

5. Mr.Ketkar, learned Counsel appearing for the petitioner-sugar factory, submitted that this order passed by the 2nd respondent-Minister is

principally on three grounds. Firstly, the consent of the Village Panchayat was not obtained. Mr.Anturkar, learned Counsel appearing for respondent No.4-Village Panchayat, accepted that there is no such specific provision. The second ground was that the construction of the factory is hit by what is called as "red category" which is likely to lead to high level of pollution. As far as this submission is concerned, Mr.Ketkar points out that in the nearby areas there are number of factories and what is material is that they have all been permitted. In his submission, what is necessary is that the pollution must be kept under check and it must conform to the norms of the Pollution Control Board only. On any such ground, the factory to be set up can be prevented from being set up. The third ground in that order was that a proper inquiry has not been conducted by the Board and that the procedure under the rules has not been followed.

6. Mr.Anturkar, learned Counsel appearing for respondent No.4-Village Panchayat, has drawn our attention to Rule 30 of the Maharashtra Water (Prevention and Control of Pollution) Rules, 1983. This Rule 30 lays down that on receipt of an application for consent under Section 25 or

Section 26 of the Act, the Board may depute its officer to visit the premises of the factory and verify the correctness or otherwise of the various particulars stated therein. The officer is expected to inspect the place where the water, sewage or industrial effluent is discharged by the applicant or treatment procedure and plants, purification works or disposal systems of the applicant and require them to furnish the plans, specifications etc. Mr.Anturkar points out that the officer has only made remarks sitting in his cabin. When a query is made under the Right to Information Act as far as this inquiry having been made, the reply was that the area where the proposed project was coming up was known to the Regional Officer, Pune and based on the submissions and discussions with the applicant, the matter was examined and recommended to the Maharashtra Pollution Control Board. Surely, this is not the way. The officers are expected to act and the rule is observed clearly in breach. The Minister, therefore, cannot be faulted on the ground that the necessary required procedure has not been followed.

7. At the same time having noted this objection of the villagers, on the last date, we

had asked the petitioner to place on record as to in what manner it proposes to set up the treatment plant and as to what are the qualifications of the agencies which will be entrusted this work, how much amount will have to be spent and how much time for setting up of the plant will require. This is because the original complaint of the villagers was essentially about the likely pollution.

8. An Affidavit has been filed by one Mr.R.K. Borkar, Chairman & Managing Director and various particulars in this behalf as required have been given.

9. This being the position, in our view, the better course will be that now that the necessary information is being furnished by the petitioner, the concerned officer of the Pollution Control Board ought to visit the site, find out whether what is proposed is as per the norms of the Pollution Control Board and then decide whether the required consent for establishing the factory ought to be given or not. The villagers or the Surpanch may appoint an appropriate representative who will place all this material before the officer concerned, which ought to be considered by

the officer before he makes his report.

10. Mr.Ketkar, learned Counsel appearing for the petitioner, submits that the petitioner does have the necessary permission from the Collector under Section 18 of the Maharashtra Regional and Town Planning Act, 1966 and, therefore, the construction should be permitted to be proceeded. The permission from the Collector is not a substitute to the permission which is required under Section 25 of the Water (Prevention and Control Pollution) Act, 1974. Both these requirements have got to be satisfied and, therefore, the petitioner must get the approval as required under Section 25 from the Water Board. Now, that the details of the project have been made available and placed on an Affidavit, the officer of the Board will visit the site and make the necessary inquiry. We expect him to take a decision at the earliest.

11. Mr.Govilkar, learned Counsel appearing for respondent No.3, states, on instructions, that the necessary decision will be taken within two weeks from today. In the event the approval is granted, the petitioner may proceed with the construction of the sugar factory.

12. We make it clear that as far as consent to operate is concerned, that will be at the later stage.

13. The impugned order will stand substituted by this order.

14. Petition stands disposed of with the above order.

(ACTING C.J.)

(V.M. KANADE, J.)